UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD ROBERT CAPPADONA and JEFFREY ROHRER

Appeal 2006-3190
Application 09/425,436
Technology Center 1700

Decided: February 21, 2007

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and CHARLES F. WARREN, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal which involves claims 20-23.

We AFFIRM.

The subject matter on appeal relates to waterless cookware and to a method of waterless cooking. With reference to the Appellants' drawing, the cookware comprises a pan 10, a removable lid assembly 20 which includes a knob body 66 having an aperture 38 through which extends a

thermometer 32 wherein the thermometer is removable from the knob body by lifting the thermometer therefrom to facilitate cleaning. In practicing the here claimed method of waterless cooking, the temperature of the pan is heated to a predetermined point whereupon a vent 48, 52 in the lid assembly is closed and the rate at which heat is applied to the pan is reduced to thereby cook the food items in the pan at low temperatures and pressures. This subject matter is adequately illustrated by independent claims 20 and 23 which read as follows:

20. Waterless cookware comprising a cooking vessel suitable for use in stove top waterless cooking applications comprising a pan and a removable lid assembly comprising a lid having an upper surface and a lower surface and a peripheral rim, said lid assembly further comprising a knob body on said upper surface and defining at least one aperture through said knob body and said lid, said lid assembly further comprising a thermometer including a probe extending downward through said aperture and a temperature display, wherein said probe has a bottom end disposed above the rim, said probe containing a temperature sensing device disposed beneath said aperture and within said cooking vessel, said thermometer being rapidly responsive to temperature changes within the cooking vessel, and being removable from said knob body by lifting the thermometer therefrom to facilitate cleaning.

23. A method of waterless cooking comprising placing one or more food items with little or no additional water in a cooking pan having a bottom wall, at least one side wall, and a removable lid assembly, said lid assembly comprising a lid having an upper surface and a rim, and having a knob assembly on said upper surface and said lid assembly having at least one aperture in the lid and at least one vent therethrough, and a thermometer including a probe extending downward to [sic] through said aperture and a temperature display, said probe having a lower end disposed slightly above the elevation of the rim of the lid;

applying heat to the bottom of the pan;

measuring temperature with said probe, said probe having a temperature sensing device disposed beneath said aperture and within said pan, above all of said food items to measure temperature between said food items and said lid assembly; and

when the temperature in the pan reaches a predetermined point, closing the vent and reducing the rate at which heat is supplied to the pan to cook the food items at low temperatures and pressures.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

Bosch (as translated)	DE 7,527,182	Dec. 18, 1975
Hupf	US 6,004,000	Dec. 21, 1999
Barbour	US 6,293,721 B1	Sep. 25, 2001

Claims 20-22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Barbour in view of Bosch, and claim 23 is correspondingly rejected over these references and further in view of Hupf.[1]

We refer to the Brief and Reply Brief and to the Answer for a complete exposition of the opposing viewpoints expressed by the Appellants and by the Examiner concerning the above noted rejections.

OPINION

For the reasons set forth in the Answer and below, we will sustain each of these rejections.

The Rejection based on Barbour in view of Bosch

According to the Examiner, claim 20 distinguishes over Barbour by requiring a knob body having an aperture with a removable thermometer

[1] Dependent claims 21 and 22 have not been separately argued by the Appellants in the manner required by 37 C.F.R. § 41.37(c)(1)(vii)(2005). Accordingly, these claims will stand or fall with parent independent claim 20. It follows that we will focus on the independent claims only in our assessment of the rejections before us.

therein. The cooking pot of Barbour comprises a handle, though not in the form of a knob body, and an aperture containing a removable thermometer, though not located in the aforementioned handle. It is the Examiner's basic position that it would have been obvious for one with ordinary skill in the art to replace the handle and separate aperture/thermometer of Barbour with a handle in the form of a knob body having an aperture containing a removable thermometer in view of Bosch's teaching of a handle in the form of a knob body having an aperture containing a thermometer therein.

The Appellants argue that the Examiner's obviousness conclusion is improper because neither Barbour nor Bosch discloses a thermometer removable from a knob body (Br. 9). More specifically, the Appellants point out that the thermometer of Bosch is not disclosed as being removable from the knob body handle.

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of a primary reference, nor whether the claimed invention is expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

This test reveals that the Examiner's obviousness conclusion is well founded. The thermometer of Bosch may not be removable from the knob body handle. However, Barbour's thermometer unquestionably is removable (Figure 2; paragraph bridging column 4-5) and thereby facilitates the cleaning thereof. We agree with the Examiner, therefore, that the combined teachings of the Barbour and Bosch references would have suggested the above discussed replacement thereby yielding a knob body

handle having an aperture containing a thermometer which is removable to facilitate cleaning.

The Appellants also argue that Barbour and Bosch contain no teaching or suggestion of waterless cookware. In this regard, the Appellants contend that the claim term "waterless" is well understood in the art to refer to "a style of cooking that creates and then employs sub-atmospheric pressure during the heating and cooking process" (Br. 7). As support for this contention, the Appellants refer to the Cappadona Declaration of record filed January 24, 2002. On the other hand, the Examiner urges that the claim 20 phrase "[w]aterless cookware," when given its broadest reasonable interpretation consistent with the Specification, encompasses Barbour's pot wherein cooking may be performed without added water (Answer, paragraph bridging 8-9).

Claims must be read in view of the specification of which they are a part, and the specification is the single best guide to the meaning of a disputed term. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315, 75 USPQ2d 1321, 1327 (Fed. Cir. 2005). Extrinsic evidence such as the Cappadona Declaration is generally less reliable than the Specification. *Id.*, 415 F.3d at 1318, 75 USPQ2d at 1330. Further, conclusory, unsupported assertions by experts as to the definition of a claim term are not useful. *Id.*

The Appellants' Specification describes the here claimed cookware as useful for a variety of cooking methods including waterless cooking (Specification, paragraph bridging 3-4). However, the Specification contains no definition of the phrase waterless cooking and contains no indication that waterless cooking "creates and then employs sub-atmospheric pressure during the heating and cooking process" (Br. 7). While Declarant

Cappadona states that waterless cooking takes place under sub-atmospheric or partial vacuum conditions (Declaration 2-3), this statement is conclusory and unsupported by evidence.[2] It follows that Declarant's statement is not useful to us in interpreting the claim 20 phrase "[w]aterless cookware." *Phillips*, 415 F.3d at 1318, 75 USPQ2d at 1330.

This analysis leads to the determination that the claim phrase "[w]aterless cookware" encompasses the pot taught by Barbour to be useful for cooking without water addition as urged by the Examiner, rather than cookware in which sub-atmospheric pressure is created as urged by Appellants.

Contrary to the Appellants' position, therefore, the cookware resulting from the Examiner's proposed combination of Barbour and Bosch would fully satisfy the claim 20 features in controversy on this appeal. It follows that the Examiner has established a prima facie case of obviousness with respect to independent claim 20 based on the Barbour and Bosch references.

The Rejection based on Barbour in view of Bosch and Hupf

The Appellants do not contest the Examiner's conclusion that "[i]t would have been obvious to one of ordinary skill in the art to incorporate the cooking steps of Hupf . . . into the invention of Barbour" (Answer 5). Instead, the Appellants argue that "[n]either Barbour, Bosch, nor Hupf disclose[s] cookware having both an aperture and a vent in a lid and that is ***also*** suitable for waterless cooking." (Br. 10). More specifically, the Appellants concede that Barbour, "a reference to outdoor cooking, includes

[2] We observe that the Hupf patent, which is applied in the rejection discussed below, is similar to the Appellants' Specification in that both describe waterless cooking but do not indicate sub-atmospheric pressure is employed in this type of cooking. Therefore, both the Appellants' Specification and the prior art to Hupf fail to support the statement by Declarant Cappadona that waterless cooking employs sub-atmospheric pressure.

an opening and a vent in the lid" but argue that "vents on outdoor cooking vessels do not (and should not) seal sufficiently to achieve the sub-atmospheric pressures that characterize and define waterless cooking. *Id.*

This argument is unpersuasive, because it based on the proposition that waterless cooking requires achievement of sub-atmospheric pressures. As fully explained previously, this proposition is not supported by the record of this appeal.

Under these circumstances, we determine that the Examiner also has established a prima facie case of obviousness with respect to independent claim 23 based on Barbour in view of Bosch and Hupf.

Appellants' proffered evidence of nonobviousness

The Appellants state that the Cappadona Declaration presents evidence of commercial success in the form of increased sales of Ultra Tec cookware which is said to include all of the features "of at least claims 20-22" (Br., paragraph bridging 11-12 and Declaration 1-2). The deficiency of this evidence is that the Declaration fails to prove the requisite nexus between any commercial success and the novel features claimed by Appellants. *In re Huang*, 100 F.3d 135, 140, 40 USPQ2d 1685, 1690 (Fed. Cir. 1996). This deficiency is highlighted by the statement of Appellants and Declarant that the Ultra Tech cookware includes all of the features of "*at least* claims 20-22" (Br., paragraph bridging 11-12 and Declaration 1-2; emphasis added). For all we know, the increased sales of this Ultra Tech were due to features other than those recited in the sole apparatus claim argued on this appeal.

The Appellants also argue that the Cappadona Declaration "provides evidence of a long-felt need for the claimed invention [because] Cappadona spent over two years on research and development of the claimed invention . . . [and] [n]o waterless cookware embodying the claimed invention was discovered." (Br. 12). While this may evince novelty, it does not constitute the required proof to establish a long felt need that was solved by the claimed invention and not solved by others. *Riverwood Int'l Corp. v. Mead Corp.*, 212 F.3d 1365, 1366, 54 USPQ2d 1763, 1765 (Fed. Cir.) , *cert. denied*, 531 U.S. 1012 (2000). The Declaration contains no evidence at all of a long felt need that was solved by the here claimed invention.

Finally, the Appellants argue that the prior art, as represented by the Hupf patent, teaches away from their claimed invention wherein a thermometer protrudes through the lid of waterless cookware (Br. 12-13). In order to teach away, a reference must contain clear discouragement. *In re Fulton*, 391 F.3d 1195, 1199, 73 USPQ2d 1141, 1144 (Fed. Cir. 2004). The Hupf disclosure contains no clear discouragement of waterless cookware in which the thermometer protrudes through the lid. Accordingly, Hupf does not teach away from the claimed invention and concomitantly does not evince nonobviousness as urged by Appellants.

Conclusion

For the reasons set forth above and in the Answer, the Examiner has established a prima facie case of obviousness with respect to each of the independent claims on appeal. Our consideration of the argument and evidence submitted by Appellants in response to this prima facie case leads us to the determination that, based on the totality of the record by a preponderance of evidence with due consideration to persuasiveness of

argument, the subject matter defined by independent claims 20 and 23 would have been obvious within the meaning of 35 U.S.C. § 103. We hereby sustain, therefore, the § 103 rejection of claim 20 and of nonargued dependent claims 21 and 22 based on Barbour in view of Bosch as well as the § 103 rejection of claim 23 based on Barbour in view of Bosch and Hupf.

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

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